



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF NAZARCHUK v. UKRAINE

(Application no. 9670/02)

JUDGMENT

STRASBOURG

19 April 2005

FINAL

19/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nazarchuk v. Ukraine,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖEN,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 March 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9670/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Mr Ivan Zakharovych Nazarchuk (“the applicant”), on 6 August 2001.

2. The Ukrainian Government (“the Government”) were represented by their Agents, Ms Valeria Lutkovska, succeeded by Ms Zoryana Bortnovska.

3. The applicant complained of the failure of the State authorities to execute the judgment of 16 August 1999, as amended by the resolution of 15 March 2000, given in his favour. He alleged an infringement of Articles 6 § 1 and 13 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The application was communicated to the respondent Government on 10 April 2003. On the same date the Court decided that Article 29 § 3 of the Convention should be applied, and the admissibility and merits of the application be considered together.

6. The applicant and the Government each filed observations on the admissibility and merits (Rule 54A).

THE FACTS

7. The applicant is a Ukrainian national who was born on 6 January 1941 and lives in Dolyns'ka, the Kirovograd Region.

I. THE CIRCUMSTANCES OF THE CASE

8. In March 1999 the applicant instituted proceedings in the Dolyns'ka City Court against the State Treasury Department, the Dolyns'ka financial department of the Municipal Council and the Dolyns'ka Tax Police Department, seeking compensation for the damage caused by the unlawful seizure and confiscation of his car.

9. On 16 August 1999 the Dolyns'ka City Court awarded the applicant UAH 50,000¹ in compensation for moral and material damage.

10. On 15 March 2000 the Presidium of the Kirovograd Regional Court allowed the *protest* of the Deputy Prosecutor General of Ukraine lodged against this decision. It amended the decision of 16 August 1999 and reduced the amount of compensation to UAH 20,000².

11. On 21 June 2000 the Supreme Court of Ukraine rejected the further *protest* of the Deputy Prosecutor General lodged against the decision of 15 March 2000. The Supreme Court ruled that the UAH 20,000³ compensation awarded to the applicant by the decision of 16 August 1999, as amended on 15 March 2000, had been reasonably established.

12. On 20 September 2000 the Dolyns'ska City Court initiated enforcement proceedings in the applicant's case and delivered the relevant writs of execution to the applicant.

13. On 12 December 2000 the Kyiv City Department of Justice informed the applicant that the State Treasury of Ukraine and its regional departments were responsible for such payments and therefore the writs of execution had to be forwarded to them.

14. On 18 July 2001 the State Treasury of Ukraine informed the applicant that it was not possible to execute the judgment because there were no relevant provisions in Ukrainian law (i.e. no relevant resolution of the Cabinet of Ministers of Ukraine) authorising it.

15. On 15 May 2002 the National Bank of Ukraine transferred UAH 20,000⁴ to the applicant's account in execution of the judgment of 16 August 1999, as modified by the resolution of the Presidium of the Kirovograd Regional Court on 15 March 2000.

1. EUR 10,628.0.

2. EUR 3,758.65.

3. See reference above.

4. See reference no. 2 above.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law is summarised in the judgment of *Romashov v. Ukraine* (no. 67534/01, §§ 16-18, 27 July 2004).

THE LAW

17. The applicant complained of an alleged failure of the State authorities to execute the decision of 16 August 1999, as amended on 15 March 2000, given in his favour. He invoked Articles 6 § 1 and 13 of the Convention, which provide, insofar as relevant, as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY

A. The Government’s preliminary objections

18. The Government considered that the applicant had not complied with the six months rule as he only lodged his application with the Court on 6 August 2001. Otherwise, he could no longer claim to be a victim of a violation of the Convention as he had received full payment of the judgment debt. They also contended that the applicant had not exhausted domestic remedies regarding the Bailiffs’ Service and the expedition of proceedings.

19. The applicant disagreed.

20. The Court notes that, on the date of introduction of the application, the judgment had not been enforced. Thus the six months rule had no application to this continuing situation. As regards the other objections, the Court also notes that similar points have already been dismissed in a number of Court judgments (see the aforementioned *Romashov* judgment, § 41). In such cases the Court has found that applicants may still claim to be

victims of an alleged violation of Article 6 § 1 in relation to the period during which the decisions of which complaint is made remain unenforced, and that the applicants were absolved from pursuing the remedies invoked by the Government. It finds no reason to reach different conclusions in the present case and, therefore, rejects the Government's objections.

21. In the light of the parties' submissions, the Court concludes that the applicant's complaint under Article 6 § 1 of the Convention raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this part of the application inadmissible. For the same reasons, the applicant's complaint under Article 13 of the Convention cannot be declared inadmissible.

II. MERITS

A. The applicant's complaints under Article 6 § 1 of the Convention

22. The Government suggested that there was no infringement of Article 6 § 1 of the Convention in view of the enforcement of the judgment.

23. The applicant disagreed.

24. The Court notes that the decision of 16 August 1999, as amended by the judgment of the Presidium of the Kirovograd Regional Court of 15 March 2000, remained unenforced from 20 September 2000 (the date when the enforcement proceedings were instituted) until 15 May 2002 (the date of payment of UAH 20,000¹ to the applicant), i.e. a period of nearly one year and eight months. It further notes that this decision was enforced in full before the communication of the application to the respondent Government, although the applicant did not inform the Court of this for over a year.

25. Nevertheless, the Court considers that by delaying for nearly one year and eight months the enforcement of the judgment in the applicant's case, the authorities deprived the provisions of Article 6 § 1 of the Convention of much of their useful effect. The Court finds that the Government have not advanced any justification for this delay (see *Shmalko v. Ukraine*, no. 60750/00, judgment of 20 July 2004, § 45).

26. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

1. EUR 4,320.23.

B. The applicant's complaints under Article 13 of the Convention

27. The Government maintained that the applicant had at his disposal effective remedies explicitly provided for by domestic legislation in order to challenge the non-enforcement of the court judgment given in his favour. They referred to their earlier argument on exhaustion of domestic remedies.

28. The applicant challenged these submissions, stating that the purported remedies were ineffective in his case since no fault for the delay in the enforcement proceedings could be attributed to the Bailiffs or the Treasury, who were entrusted with its execution.

29. The Court refers to its findings (at paragraphs 20-21 above) concerning the Government's argument regarding domestic remedies. For the same reasons, the Court concludes that the applicant did not have an effective domestic remedy, as required by Article 13 of the Convention, to redress the damage created by the delay in the present proceedings. Accordingly, there has also been a breach of this provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

31. The applicant originally claimed pecuniary damage for the unpaid compensation. He also claimed non-pecuniary damage amounting to UAH 50,000 (EUR 8,020). He subsequently maintained that he should be paid a total of UAH 150,000 (EUR 24,060) in compensation for both pecuniary and non-pecuniary damage for an allegedly unlawful detention.

32. The Government disputed the applicant's claims. They alleged that they were unsubstantiated. Furthermore, they submitted that the finding of a violation would constitute sufficient just satisfaction in the case.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicant. It makes no award in this respect. As to non-pecuniary damage, it finds the applicant's claim unsubstantiated and considers that the finding of a violation indeed constitutes sufficient just satisfaction, given the applicant's prolonged silence regarding the enforcement of the judgment in his case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that the finding of a violation constitutes sufficient just satisfaction in the circumstances of the case;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 19 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President